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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

AUG 09 2018

DAVID H. YAMASAKI, Clerk of the Court

BY: D. IBARRA, DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

JOSHUA WARING,

Defendant.

Case No. 17WF2266

**MEMORANDUM OF POINTS AND
AUTHORITIES RE: EXCLUSION OF
PRIVILEGED ATTORNEY-CLIENT
COMMUNICATIONS**

DATE: August 13, 2018
TIME: 9:00 AM
DEPT: C37

Real Party In Interest ORANGE COUNTY SHERIFF'S DEPARTMENT ("OCSD") submits the following Memorandum of Points and Authorities asserting the attorney-client privilege and requesting that the Court sustain the OCSD's objection to questions about the content of the OCSD communications with the Office of County Counsel ("County Counsel"). At the conclusion of the proceedings on July 26, 2018, OCSD's Inmate Services Division Director Greg Boston was ordered to return on August 13, 2018, to resume his testimony. The testimony in progress when the Court recessed involved discussions between Mr. Boston, members of OCSD command staff, and Deputy County Counsels discussing documents and testimony subpoenaed in this case.

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Given that: 1) County Counsel is statutorily the legal representative for the OCSD, 2) County Counsel was providing legal advice to its client in the context of a court proceeding, 3) the inquiry in this matter seeks to probe the content of discussions that occurred between members of OCSD and County Counsel's Office where legal issues were discussed and legal counsel was provided, 4) County Counsel immediately objected and invoked the privilege on behalf of OCSD, and 5) OCSD continues to invoke the privilege for communications indisputably made in confidence, and 6) there is no indication of any waiver, it is clear that the established facts demonstrate that the communications sought to be breached are protected by the attorney-client privilege.

The inquiry into attorney client communications must end where it did. There is no basis for any further questioning of the witness, Mr. Boston, regarding communications had between command staff members of the OCSD and Deputy County Counsels related to legal matters in this case. Moreover, there is no basis for an *in-camera* proceeding pursuant to Evidence Code section 915. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725.)

I. FACTS

Defendant JOSHUA WARING ("Defendant") filed a Motion to Dismiss on January 29, 2018, requesting that the Court dismiss his attempted murder charges because the OCSD recorded some of his phone calls to his girlfriend, parents and grandmother, allegedly violating attorney-client privilege. The Defendant now seeks communications between the OCSD and County Counsel, claiming that the content of the communication is not privileged. Defendant asserts that the statutorily created attorney-client relationship between the OCSD and County Counsel may be pierced, but Defendant's communications with his girlfriend, parents and grandmother may not. Indeed, the Defendant alleges that law enforcement's discussion with the County's attorneys is subject to questioning in open court, but because an inmate's conversations with his relatives and girlfriend were recorded, and as such, it allegedly amounts to outrageous government conduct justifying a dismissal of attempted murder charges.¹

¹ It appears Defendant's public policy argument is that a pro per inmate's telephone calls to his girlfriend, parents, and grandmother must be protected, but the County's law enforcement

As part of the hearing on that Motion, certain witnesses employed by OCSD have been called as witnesses. On July 26, 2018, the Defendant called Inmate Services Division Director Greg Boston to testify about a list of telephone numbers that when called, are not recorded by the OCSD jail ("the List").² The List was the subject of several previous subpoenas by the Defendant as well as protective orders, motions, and hearings. Mr. Boston testified about a meeting he attended with other members of the OCSD command staff and Deputy County Counsels. (Exhibit A, Transcript at p. 136, lines 18-21.) Counsel asked Boston whether Commander Balicki and Boston discussed the number of people that were on the list during their meeting with County Counsel. (Exhibit A, Transcript at p. 136, lines 22-26.) Defense counsel then asked whether Commander Balicki expressed any dissatisfaction about the number of attorneys on the list that was discussed at the meeting with County Counsel. The District Attorney objected, as did the County Counsel, asserting attorney client privilege as to the line of questioning regarding the meeting. The OCSD incorporates County Counsel's arguments on July 26, 2018, herein by reference.

II. ARGUMENT

A. The Information Sought Is Protected By The Attorney-Client Privilege And There Is No Basis for Inquest Into Confidential County Counsel/OCSD Legal Communications

Here, Mr. Boston, OCSD command staff, and Deputy County Counsels were discussing the List that was the subject of multiple subpoenas, protective orders, motions, and hearings in this case. The meeting most certainly was not related to Mr. Boston's personal legal inquires, but was related the List maintained by the OCSD and the subject of court proceedings involving the OCSD. This was a County matter involving County employees who were consulting with County attorneys.

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agency cannot communicate with its attorneys in confidence. See Section A *infra*.

² It is not entirely clear how a list of telephone numbers that an inmate can call and have a conversation that is *not recorded* is directly relevant to the Defendant's Motion to Dismiss about *recorded* phone calls. See Section C below.

1 Evidence Code section 952: confidential communication between client and lawyer,
2 provides:

3 As used in this article, "confidential communication between client and lawyer"
4 means information transmitted between a client and his or her lawyer in the course
5 of that relationship and in confidence by a means which, so far as the client is
6 aware, discloses the information to no third persons other than those who are
7 present to further the interest of the client in the consultation or those to whom
disclosure is reasonably necessary for the transmission of the information or the
accomplishment of the purpose for which the lawyer is consulted, and includes a
legal opinion formed and the advice given by the lawyer in the course of that
relationship.

8 In this case, the communications at issue are confidential within the meaning of Evidence
9 Code section 952. The communications that occurred at the subject meeting consisted of
10 "information transmitted between client and lawyer." County Counsel is the lawyer for the
11 constituent agencies of Orange County. (*See* Gov't Code, §§ 26526 and 26259; *see also County*
12 *of Kern v. Sparks* (2007) 149 Cal.App.4th 11, 18-19.) The communications were made in the
13 course of the relationship between the County Counsel and OCSD. There is no evidence that
14 the conversation was anything other than in confidence, and OCSD asserts affirmatively that the
15 discussions were had in confidence. The information has not been disclosed to any third
16 persons. County Counsel provided legal advice and counsel during the meeting to the client,
17 OCSD. County Counsel provided formed legal opinions and rendered legal advice to the client
18 at the meeting. The entire purpose of the meeting was for County Counsel to provide advice and
19 counsel to the OCSD.

20 Moreover, Evidence Code section 954 provides:

21 The relationship of attorney and client shall exist between a law corporation as
22 defined in Article 10 (commencing with Section 6160) of Chapter 4 of Division 3
23 of the Business and Professions Code and the persons to whom it renders
24 professional services, as well as between such persons and members of the State
Bar employed by such corporation to render services to such persons. The word
"persons" as used in this subdivision includes partnerships, corporations, limited
liability companies, associations and other groups and entities.

25 A client, or "persons" as used in Evidence Code section 951, includes partnerships,
26 corporations, limited liability companies, associations and other groups and entities, which
27 naturally extends to a County agency and County Counsel. Mr. Boston's role as a Division
28 Director for the OCSD does not disrupt this relationship. An agency can only act through its

1 individual officers and employees.³ If employees of the OCSD acting within the scope of their
2 employment did not enjoy an attorney-client relationship with County Counsel on County
3 matters, then each employee would need their own attorney which is cost prohibitive and
4 absurd.

5 Evidence Code section 954 authorizes a party to prevent disclosure, or to prevent another
6 from disclosing, confidential communications between attorney and client regarding the
7 representation.

8 Subject to Section 912 and except as otherwise provided in this article, the client,
9 whether or not a party, has a privilege to refuse to disclose, and to prevent another
10 from disclosing, a confidential communication between client and lawyer if the
11 privilege is claimed by:

12 (a) The holder of the privilege;

13 (b) A person who is authorized to claim the privilege by the holder of the
14 privilege; or

15 (c) The person who was the lawyer at the time of the confidential communication,
16 but such person may not claim the privilege if there is no holder of the privilege in
17 existence or if he is otherwise instructed by a person authorized to permit
18 disclosure.

19 A "client" within the meaning of the attorney-client privilege is "a person who, directly
20 or through an authorized representative, consults a lawyer for the purpose of retaining the
21 lawyer or securing legal service or advice [from the lawyer in the lawyer's] official capacity."
22 (Evidence Code section 951.)

23 The term "lawyer" "means a person authorized, or reasonably believed by the client to be
24 authorized, to practice law in any state or nation." (Evid. Code, § 950.) Individual attorneys
25 employed by the Office of the County Counsel are authorized to practice law. "[T]he privilege
26 applies not only to communications made in anticipation of litigation, but also to legal advice
27 when no litigation is threatened." (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 371.)

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³ The California Supreme Court recently considered a California Public Records Act case where the city argued that it did not possess certain records because the documents were held by their individual employees. The Court did not find this argument persuasive and stated, "Broadly construed, the term 'local agency' logically includes not just the discrete governmental entities listed in [Government Code section 6252(a)] but also the individual officials and staff members who conduct the agencies' affairs. ***It is well established that a governmental entity, like a corporation, can act only through its individual officers and employees.***" *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 620. (emphasis added.)

1 Evidence Code section 915: disclosure of privileged information or attorney work
2 product in ruling on claim of privilege, subdivision (a), in turn provides in relevant part:

3 (a) Subject to subdivision (b), *the presiding officer may not require disclosure of*
4 *information claimed to be privileged under this division or attorney work*
5 *product under subdivision (a) of Section 2018.030 of the Code of Civil*
6 *Procedure in order to rule on the claim of privilege*; provided, however, that in
7 any hearing conducted pursuant to subdivision (c) of Section 1524 of the Penal
8 Code in which a claim of privilege is made and the court determines that there is
no other feasible means to rule on the validity of the claim other than to require
disclosure, the court shall proceed in accordance with subdivision (b).
[Emphasis added.]

9 Evidence Code section 915 places a flat prohibition on the disclosure of attorney-client
10 privileged information in order to rule on the claim of attorney-client privilege. Evidence Code
11 section 915 admits of limited exceptions in subdivision (b), but those exceptions apply only
12 where a court is ruling on a claim of official information/identity of informer privilege pursuant
13 to Evidence Code section 1040, trade secret privilege under Section 1060, or attorney work
14 product privilege under subdivision (b) of Section 2018.030 of the Code of Civil Procedure.
15 Regarding the exceptions in Evidence Code section 915(b), “No comparable provision permits
16 in camera disclosure of information alleged to be protected by the attorney-client privilege.”
17 (*Costco Wholesale Corp. v. Superior Court, supra*, 47 Cal.4th at 736.)

18 The Defendant alleges that *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th
19 725 (“*Costco*”), does not apply. However, the Fourth District Court of Appeal specifically
20 directed the Court to consider *Costco* as applied to any claim of attorney-client privilege. In
21 *Costco*, the retailer hired an outside law firm to provide legal advice regarding whether certain
22 Costco warehouse managers in California were exempt from California’s wage and overtime
23 laws. Attorney Hensley prepared a 22-page opinion letter on the subject. Years later, Costco
24 employees sued Costco claiming that for certain years Costco had misclassified some of its
25 managers as “exempt” and therefore had failed to pay them overtime wages they were due as
26 nonexempt employees. During the litigation, plaintiff’s sought to compel discovery of
27 Hensley’s opinion letter. Costco objected on the grounds that the opinion letter was subject to
28 the attorney client privilege.

1 In ruling on the issue, the Supreme Court stated:

2 We hold the attorney-client privilege attaches to Hensley's letter in its entirety,
3 irrespective of the letter's content. Further, Evidence Code section 915 prohibits
4 disclosure of the information claimed to be privileged as a confidential
5 communication between attorney and client "in order to rule on the claim of
6 privilege." Finally, contrary to the Court of Appeal's holding, a party seeking
7 extraordinary writ relief from a discovery order that wrongfully invades the
8 attorney-client relationship need not also establish that its case will be harmed by
9 disclosure of the evidence.

10 (*Id.*, at 731-32 [citation omitted].)

11 The attorney-client privilege, found in Evidence Code section 954, confers a privilege on
12 the client "to refuse to disclose, and to prevent another from disclosing, a confidential
13 communication between client and lawyer...." The privilege "has been a hallmark of Anglo-
14 American jurisprudence for almost 400 years." (*Mitchell v. Superior Court* (1984) 37 Cal.3d
15 591, 599.)

16 Its fundamental purpose "is to safeguard the confidential relationship between
17 clients and their attorneys so as to promote full and open discussion of the facts
18 and tactics surrounding individual legal matters. [Citation.] ... [¶] Although
19 exercise of the privilege may occasionally result in the suppression of relevant
20 evidence, the Legislature of this state has determined that these concerns are
21 outweighed by the importance of preserving confidentiality in the attorney-client
22 relationship.

23 (*Costco, supra*, at 732.)

24 As the California Supreme Court has stated: "The privilege is given on grounds of public
25 policy in the belief that the benefits derived therefrom justify the risk that unjust decisions may
26 sometimes result from the suppression of relevant evidence." (*Mitchell v. Superior Court, supra*,
27 37 Cal.3d at 599-600.) "[T]he privilege is absolute and disclosure may not be ordered, without
28 regard to relevance, necessity or any particular circumstances peculiar to the case." (*Gordon v.*
Superior Court (1997) 55 Cal.App.4th 1546, 1557.)

It is undisputed that the Orange County Counsel's Office provides legal advice and legal
services to the Orange County Sheriff-Coroner Department, a constituent agency of the County.

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Government Code section 26259 provides in part:

(a) In counties that have a county counsel, the county counsel shall discharge all the duties vested in the district attorney by Sections 26520, 26522, 26523, 26524, and 26526. The county counsel shall defend or prosecute all civil actions and proceedings in which the county or any of its officers is concerned or is a party in his or her official capacity. ***Except where the county provides other counsel, the county counsel shall defend as provided in Part 7 (commencing with Section 995) of Division 3.6 of Title 1 of the Government Code any action or proceeding brought against an officer, employee, or servant of the county.***

Government Code section 26526 provides:

The county counsel, or if none the district attorney, is the legal adviser of the board of supervisors. The county counsel or if none, the district attorney, shall attend its meetings, when required, and shall attend and oppose all claims and accounts against the county he or she deems unjust and illegal.

Absent a conflict of interest precluding the County Counsel from giving legal advice, a County officer is required to seek and follow the advice of county counsel. (*County of Kern v. Sparks* (2007) 149 Cal.App.4th 11, 18-19.)

County Counsel's communications during meetings with members of the OCSD, particularly members of its command staff, while discussing legal issues and providing legal advice and guidance to its client, the OCSD, though its agents, are absolutely privileged.

Based on the reasons below, the Court next finds that documents bearing Bates numbers Sheriff 001832-35 and Sheriff 001843-45 satisfy the attorney-client privilege's elements and are absolutely protected from disclosure.

First, the communications were made during the course of County Counsel's request for the client's input on how a claim should be handled. This qualifies as "legal advice of any kind."

Next, the County Counsel was acting as the County's legal advisor and the communications were made in County Counsel's capacity as such; the Sheriff is part of the County. And although Ms. Wiggs was not herself an attorney, she was acting in her capacity as a County Counsel employee. (See *United States v. Kovel*, 296 F.2d 918, 921 (2d Cir.1961).)

Here, the communications at issue here were made during the course of providing legal advice and legal services to OCSD by the County Counsel's Office in confidence. There is nothing in the record to indicate otherwise; County Counsel immediately asserted the privilege upon the offending inquiry, and OCSD maintains assertion of the privilege to present. The record is devoid of any indication that the attorney-client privilege was waived by disclosure to third parties, or in any other way.

1 The Court in *Costco* noted: “That Hensley’s letter may not have been prepared in
2 anticipation of litigation is of no consequence; the privilege attaches to any legal advice given in
3 the course of an attorney-client relationship.” (*Costco, supra*, at 733, citing *Roberts v. City of*
4 *Palmdale* (1993) 5 Cal.4th 363, 371 and *Zurich American Ins. Co. v. Superior Court, supra*, 155
5 Cal.App.4th at 1495.) “The attorney-client privilege attaches to a confidential communication
6 between the attorney and the client and bars discovery of the communication irrespective of
7 whether it includes unprivileged material.” (*Costco, supra*, at 734.) Moreover, “[n]either the
8 statutes articulating the attorney-client privilege nor the cases which have interpreted it make
9 any differentiation between ‘factual’ and ‘legal’ information.” (*Mitchell v. Superior Court,*
10 *supra*, 37 Cal.3d at 601.)

11 “The party claiming the privilege has the burden of establishing the preliminary facts
12 necessary to support its exercise, i.e., a communication made in the course of an attorney-client
13 relationship.” (*Costco Wholesale, supra*, 47 Cal.4th at 733.) Given that: 1) County Counsel is
14 the legal representative for the Orange County Sheriff-Coroner Department; 2) County Counsel
15 was providing legal advice to its client related to a court hearing, 3) the inquiry in this matter
16 seeks to probe the content of communications between County Counsel and its client, OCSD, at
17 a meeting called specifically to provide legal advice to the client, 4) County Counsel
18 immediately invoked the privilege, and OCSD continues to invoke the privilege, of 5)
19 communications indisputably made in confidence and 6) no indication of any waiver, the
20 undisputed facts of this case establish that the communications sought are protected by attorney-
21 client privilege.

22 As noted, “[t]he [attorney-client] privilege is given on grounds of public policy in the
23 belief that the benefits derived therefrom justify the risk that unjust decisions may sometimes
24 result from the suppression of relevant evidence.” [Citations.]” (*Id.*, at pp. 599–600.) Law
25 enforcement, no less than any other association client, must be able to consult with their
26 attorneys to have a full, open and candid discussion of matters related to protecting and serving
27 the community.

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1 “[T]he fundamental purpose of the attorney-client privilege—which holds a ‘special
2 place’ in California law—is to safeguard the confidential relationship between client and
3 attorney and promote frank discussion between the two. (*Los Angeles County Bd. of*
4 *Supervisors v. Superior Court* (2016) 2 Cal.5th 282, 292.) “Even while the scope of the
5 attorney-client privilege remains constant over time, the same *information* (for example, the
6 cumulative amount of money spent on a case) takes on a different significance if it is revealed
7 during the course of active litigation,” (*Id.* at 298 [emphasis in original]), such as was the case
8 here.

9 **B. The Information Sought Is Not Relevant, and Is Excludable Under Evidence**
10 **Code Section 352**

11 *1. Inquiry Into OCSD’s Attorney Client Communications With County Counsel Is*
12 *Not Relevant To This Proceeding*

13 Evidence Code section 210 provides that: “ ‘Relevant evidence’ means evidence,
14 including evidence relevant to the credibility of a witness or hearsay declarant, having any
15 tendency in reason to prove or disprove any disputed fact that is of consequence to the
16 determination of the action.” Evidence Code section 350 provides that, “No evidence is
17 admissible except relevant evidence.”

18 Evidence Code section 352 provides that, “[t]he court in its discretion may exclude
19 evidence if its probative value is substantially outweighed by the probability that its admission
20 will (a) necessitate undue consumption of time or (b) create substantial danger of undue
21 prejudice, of confusing the issues, or of misleading the jury.”

22 Here, Defendant’s counsel seeks to inquire into the content of conversations had between
23 executive command of the Orange County Sheriff’s Department and its attorneys from County
24 Counsel during a meeting called to discuss the List. There is nothing before this Court, by way
25 of offer of proof or otherwise, that would even inferentially make such discussions relevant to
26 the issues in Defendant’s pending Motion. As stated in the OCSD Motion to Quash filed on
27 June 19, 2018, Defendant’s Motion to Dismiss alleges his phone calls were improperly recorded
28 from November 29, 2016 to December 28, 2016. Specifically, Defendant avers in his Motion

1 that “while Defendant was pro per in this and other cases, his jail telephone calls were
2 monitored and recorded by law enforcement, and further, that these recordings were turned over
3 to the investigating agency in this case, and eventually to the prosecutors in this case.” (Motion
4 to Dismiss, Page 1.) The Defendant’s Reply Brief to the Prosecutions Opposition, filed
5 February 13, 2018 (“Reply Brief”), made this point further. “[T]he defense filed its Motion to
6 Dismiss based upon outrageous government conduct, namely the monitoring, recording, and
7 release to the prosecution of what were supposed to be unmonitored collect telephone calls from
8 the Defendant while in custody.” (Reply Brief, Page 1.) There appears to be no dispute that the
9 calls were recorded. In fact, if the calls were not recorded, then the alleged outrageous
10 government conduct would not exist and the Motion to Dismiss would be moot. Therefore, a
11 list of telephone numbers that an inmate can call and have a conversation that is *not recorded* is
12 entirely irrelevant to Defendant’s Motion to Dismiss.

13 *2. Any Possible Probative Value of an Inquiry into OCSD’s Attorney-Client*

14 *Communications with County Counsel Is Substantially Outweighed by an Undue*
15 *Consumption of Time*

16 Even if information obtained by breaching the attorney-client privilege was marginally
17 relevant in some manner to the underlying proceeding, the information would still be excludable
18 under Evidence Code section 352, because its trivial probative value, if any, is substantially
19 outweighed by the undue consumption of court time. The Defendant began subpoenaing
20 documents and witnesses related to the List in June. The List is now at the center of the
21 Defendant’s line of questioning and the next Court hearing is August 13. For context, the
22 Defendant’s Motion to Dismiss was filed in January 2018, the Defendant has not rested, and the
23 Prosecution has not yet begun his case. The issue of attorney-client privilege was addressed via
24 a Writ to the Court of Appeal in July and the same issue reappeared before this Court, resulting
25 in further briefing and delays.

26 The information sought does not even have relevant evidentiary value in this matter.
27 Nevertheless, even if it did have some trivial probative value to the issues in this case, clearly
28 this is now consuming a significant amount of the Court’s time. Even though the information

sought is not relevant and excludable under Evidence Code section 352, the information is covered by the attorney-client privilege, which is inviolable on these facts.

C. The Cases Cited By The Defendant Are Not Applicable.

Defendant's legal position, both in the prior writ on this issue and reiterated at the proceedings on July 26, 2018, relies on two cases, neither of which is applicable here. The first case relied on by Defendant is *Caldecott v. Superior Court* (2015) 243 Cal.App.4th 212. *Caldecott* involved a writ of mandate after a trial court denial of a request for disclosure pursuant to the California Public Records Act ("CPRA," Gov't Code § 6250, *et seq.*), specifically "section 6245, subdivisions (c) and (k)." (*Caldecott, supra*, 243 Cal.App.4th at 216.) Moreover, in *Caldecott*, there was no holding establishing law on the issue of attorney-client privilege; the Court of Appeal announced no new rule. It simply remanded the matter back to the Superior Court to determine whether any of the materials in a trove of documents " 'directly and inextricably linked to . . . Caldecott's claim of a hostile work environment, which is an internal personnel matter exempt from disclosure under CPRA' " were subject to the attorney-client privilege. (*Caldecott, supra*, 243 Cal.App.4th at 217.) The *Caldecott* court stated clearly that any documents covered by the attorney client privilege "may be withheld from production. . . ." (*Caldecott, supra*, 243 Cal.App.4th at 228.) Lastly, it appears from the *Caldecott* case that the trial court had examined the CPRA documents *in camera* prior to the writ proceeding, apparently without objection. By contrast, OCSD here objects.

Defendant also mistakenly relies on *D.I. Chadbourne v. Superior Court* (1964) 60 Cal.2d 723. *Chadbourne*, a 1964 case, involved a determination of the extent of the attorney-client privilege for an employer as to a witness statement provided to the employer later delivered to the insurance carrier for delivery to its attorneys. More specifically, the court there stated that the "sole question presented by this mandate proceeding is whether a certain written statement, obtained by a representative of petitioner's insurance carrier and delivered to its attorney, was privileged as a matter of law. . . ." (*Chadbourne, supra*, 60 Cal.2d 723, 727.) That *Chadbourne* is distinguishable seems patent, but the present case involves no transmittal of a workplace accident report to an employer for delivery ultimately to the attorney for the employer's

1 insurance carrier. Here, the issue is whether defense counsel, under the auspices of the Court,
2 may directly inquire into the *content* of confidential attorney-client communications that
3 occurred between County Counsel and the Orange County Sheriff's Department at which legal
4 issues were discussed and legal advice was provided.

5 The Fourth Appellate District, Division Three, has resoundingly affirmed the vitality of
6 the attorney-client privilege post-*Costco. DP Pham, LLC v. Cheadle* (2016) 246 Cal.App.4th
7 653, involved an appeal of an order for disqualification of counsel after opposing counsel
8 improperly obtained copies of privileged communications between appellant and his attorney.
9 The trial court denied the disqualification finding the communications were not privileged. On
10 appeal, the court stated:

11 We reverse. After reviewing copies of the communications, the trial court
12 concluded they were not privileged based on their content. A court, however, may
13 not review the contents of a communication to determine whether the attorney-
14 client privilege protects that communication. The attorney-client privilege is an
15 absolute privilege that prevents disclosure, no matter how necessary or relevant to
16 the lawsuit. The privilege attaches to all confidential communications between an
17 attorney and a client regardless of whether the information communicated is in
18 fact privileged. Accordingly, it is neither necessary nor appropriate to review a
19 communication to determine whether the attorney-client privilege protects it.

20 (*DP Pham, LLC v. Cheadle* (2016) 246 Cal.App.4th 653, 659.)

21 **III. CONCLUSION**

22 The attorney-client privilege applies. The privilege is inviolable here and the inquiry into
23 the content of confidential communications between County Counsel and its client, the
24 ORANGE COUNTY SHERIFF'S DEPARTMENT, should cease.

25 DATED: August 9, 2018

Respectfully submitted,

26 LEON J. PAGE, COUNTY COUNSEL
27 and D. KEVIN DUNN, SENIOR DEPUTY
28 and ANNIE LOO, DEPUTY

By: 

D. Kevin Dunn, Senior Deputy

Attorneys for Real Party In Interest ORANGE
COUNTY SHERIFF'S DEPARTMENT

Exhibit A

Exhibit A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
DEPARTMENT C37

THE PEOPLE OF THE STATE OF
CALIFORNIA,

PLAINTIFF,

VS.

JOSHUA MICHAEL PHILLIP WARING,
DEFENDANT.

CASE NO. 17WF2266

HONORABLE JONATHAN FISH, JUDGE PRESIDING
REPORTER'S TRANSCRIPT

JULY 26, 2018

COPY

APPEARANCES OF COUNSEL:

FOR THE PEOPLE: TONY RACKAUCKAS, DISTRICT ATTORNEY
BY: JOHN MAXFIELD, DEPUTY
CYNTHIA NICHOLS, DEPUTY

FOR THE DEFENDANT: BY: JOEL GARSON
CONFLICT ATTORNEY

FOR ORANGE COUNTY ORANGE COUNTY COUNSEL
SHERIFF'S BY: CAROLYN KHOUZAM, DEPUTY
DEPARTMENT: ANNIE J. LOO, DEPUTY
D. KEVIN DUNN, DEPUTY

MELISSA WATANABE, CSR NO. 13191, OFFICIAL COURT REPORTER

MELISSA WATANABE, CSR #13191
OFFICIAL COURT REPORTER

TEEL GTL PRA 015

1 WITH A PRIVATE LIST?

2 A NO, I DON'T THINK SO.

3 Q AND WHAT WAS THE SUBSTANCE OF YOUR
4 CONVERSATION WITH COMMANDER BALICKI REGARDING THE LIST?

5 MR. MAXFIELD: OBJECTION. RELEVANCE.

6 THE COURT: OVERRULED.

7 THE WITNESS: I THINK WE WERE IN A GENERAL
8 DISCUSSION ABOUT THE SUBPOENA OF THOSE RECORDS.

9 BY MR. GARSON:

10 Q BUT YOU SAID THAT WAS A COUPLE OF WEEKS AGO?

11 A YEAH.

12 Q WELL, THE RECORDS HAD ALREADY BEEN PRODUCED AT
13 THE END OF JUNE. SO WAS IT BEFORE THEN?

14 A I THINK BEFORE THEN I WAS ON VACATION, SO I
15 DON'T THINK IT WAS BEFORE THEN.

16 Q AND WHAT WAS IT THAT YOU AND BALICKI TALKED
17 ABOUT IN RESPONSE -- OR AS IT RELATES TO THESE RECORDS?

18 A I THINK WE WERE HAVING A DISCUSSION WITH OUR
19 COUNSEL AND COMMANDER BALICKI.

20 Q COUNTY COUNSEL?

21 A CORRECT.

22 Q AND DID YOU AND BALICKI DISCUSS THE NUMBER OF
23 PEOPLE THAT WERE ON THE LIST?

24 MR. MAXFIELD: OBJECTION. VAGUE AS TO TIME. THIS
25 IS DURING THE MEETING WITH COUNTY COUNSEL?

26 THE COURT: THAT'S HOW I TAKE IT.

1 THE WITNESS: I'M SURE WE DID.

2 BY MR. GARSON:

3 Q DID COMMANDER BALICKI EXPRESS ANY
4 DISSATISFACTION WITH THE NUMBER OF ATTORNEYS ON THE
5 LIST?

6 MR. MAXFIELD: OBJECTION. CALLS FOR HEARSAY.

7 THE COURT: OVERRULED.

8 MS. LOO: YOUR HONOR, I'D LIKE TO OBJECT TO THE
9 LINE OF QUESTIONING INTO THE CONTENT OF THE CONVERSATION
10 WHERE COUNTY COUNSEL WAS CLEARLY PRESENT. THIS SOUNDS
11 LIKE IT INVOLVES ATTORNEY-CLIENT COMMUNICATIONS, AND WE
12 WOULD LIKE TO INVOKE THE PRIVILEGE AS STATED IN COSTCO.

13 THE COURT: ALL RIGHT. IT APPEARS TO ME THAT ANY
14 CONVERSATION WITH BALICKI AND BOSTON IN THE PRESENCE OF
15 COUNSEL WOULD BE PRIVILEGED.

16 MR. GARSON: YOUR HONOR, IF I COULD BE HEARD?

17 THE COURT: YES.

18 MR. GARSON: FIRST OF ALL, COSTCO TALKS ABOUT
19 CONVERSATIONS BETWEEN THE COMPANY COSTCO AND THE
20 LAWYERS. IT DOES NOT APPLY TO EMPLOYEES. AND OUR COURT
21 OF APPEALS, AS I INDICATED IN MY INFORMAL RESPONSE, HAS
22 ISSUED ANOTHER OPINION SINCE COSTCO AND DISCUSSED IN
23 COSTCO THAT THAT'S A WHOLE DIFFERENT BALL GAME WHEN
24 YOU'RE TALKING ABOUT AN EMPLOYEE CONVERSATION WITH AN
25 ATTORNEY.

26 THERE'S ALSO A LOT OF CASE LAW THAT SAYS THAT

1 AN ATTORNEY CAN'T MAKE WHAT IS OTHERWISE A
2 NON-PRIVILEGED CONVERSATION BY WALKING IN THE ROOM. IT
3 DOES NOT MAKE IT PRIVILEGED BECAUSE THE TWO OF THEM
4 DECIDE TO DO IT IN THE PRESENCE OF AN ATTORNEY.

5 SO THE FIRST QUESTION IS: WHO IS COUNTY
6 COUNSEL REPRESENTING IN THAT CONVERSATION? IS IT THE
7 COUNTY? IS IT BALICKI? IS IT THIS GENTLEMAN? AND WHAT
8 IS THE NATURE OF THE CONVERSATION BETWEEN THE TWO OF
9 THEM? HOW DID COUNTY COUNSEL GET INVOLVED? BUT I DON'T
10 THINK THE INQUIRY JUST STOPS BECAUSE A COUNTY ATTORNEY
11 WALKS INTO THIS CONVERSATION.

12 THE COURT: MS. LOO?

13 MS. LOO: YES, YOUR HONOR. STATUTE VERY CLEARLY
14 LAYS OUT THAT COUNTY COUNSEL IS THE ATTORNEY FOR THE
15 SHERIFF'S DEPARTMENT AND, AS HAS BEEN TESTIFIED TO, THE
16 NATURE OF THE CONVERSATION IS NOT ABOUT MR. BOSTON'S
17 PERSONAL WILL, IT'S NOT ABOUT HIM PERSONALLY WANTING TO
18 BUY A HOUSE, IT'S ABOUT THE CONDUCT OF THE SHERIFF'S
19 BUSINESS.

20 THIS CLEARLY HAS TO DO WITH VERY SPECIFIC
21 SHARED BUSINESS. THIS WOULDN'T BE THE SUBJECT OF A
22 HEARING UNLESS IT HAD TO DEAL WITH THE SHERIFF'S
23 BUSINESS. THE WAY THE AGENCY ACTS IS THROUGH ITS
24 EMPLOYEES. THE SHERIFF'S DEPARTMENT CANNOT ACT BUT FOR
25 ITS COMMANDERS, BUT FOR ITS DIVISION DIRECTORS.

26 AND SO THIS CONVERSATION THAT'S HAPPENING

1 BETWEEN COUNTY COUNSEL, A COMMANDER AND MR. BOSTON
2 CONCERNS THE COUNTY BUSINESS, CONCERNS THE SHERIFF'S
3 OPERATIONS, CONCERNS A SHERIFF'S CONTRACT. AND SO AS
4 STATUTE HAS LAID OUT THAT COUNTY COUNSEL IS THE ATTORNEY
5 FOR THE SHERIFF'S DEPARTMENT, THIS IS CLEARLY
6 ATTORNEY-CLIENT PRIVILEGED COMMUNICATIONS THAT CANNOT BE
7 DELVED INTO BY DEFENSE COUNSEL.

8 THE COURT: ALL RIGHT. MR. GARSON, YOU HAD A CASE
9 YOU CITED IN YOUR RESPONSE AS A REAL PARTY IN INTEREST
10 ON THE WRIT. AND WHAT IS THAT CASE?

11 MR. GARSON: CALDECOTT, C-A-L-D-E-C-O-T-T, VERSUS
12 SUPERIOR COURT. IT'S A 2015 CASE AT 243 CAL. APP. 4TH
13 212. AND I WOULD ALSO QUOTE DIRECTLY FROM COSTCO, THEY
14 ARE -- AT COSTCO, THE COURT QUOTES A CASE CALLED
15 CHADBOURNE, WHICH IS A SUPREME COURT CASE,
16 C-H-A-D-B-O-U-R-N-E --

17 THE COURT: WHAT PAGE ARE YOU AT?

18 MR. GARSON: OF COSTCO?

19 THE COURT: YEAH.

20 MR. GARSON: I'M AT PAGE 735. "CHADBOURNE AND ITS
21 PROGENY, THEREFORE, WOULD BE RELEVANT IF WE WERE
22 CONSIDERING WHETHER THE STATEMENTS OF THE WAREHOUSE
23 MANAGERS INTERVIEWED BY THE ATTORNEY WERE THEMSELVES
24 SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE. BUT THESE
25 AUTHORITIES ARE NOT RELEVANT TO THE QUESTION BEFORE US,
26 WHETHER THE COMMUNICATION BETWEEN COSTCO'S ATTORNEY AND

1 COSTCO WAS PRIVILEGED."

2 SO COSTCO, I THINK, BY ITSELF SAYS MANAGERS
3 ARE NOT COVERED BY THE COSTCO OPINION. WE'RE TALKING
4 ABOUT -- THE COSTCO CASE WAS A LETTER WRITTEN BY THE
5 ATTORNEY FOR COSTCO, THE COMPANY.

6 THE COURT: IT INCLUDED MANAGER STATEMENTS WITHIN
7 THE LETTER?

8 MR. GARSON: YEAH. BUT THEY SAID, WE'RE NOT
9 DISCUSSING WHETHER THE MANAGER'S -- WHETHER
10 CONVERSATIONS BETWEEN THE ATTORNEYS AND THE MANAGERS
11 WERE CONFIDENTIAL. THEY SAID, THAT'S NOT WHAT'S BEFORE
12 US. AND THEY GO BACK AND SAY CHADBOURNE WOULD CONTROL
13 UNDER THAT CIRCUMSTANCE.

14 AND THEN WHEN YOU LOOK AT CHADBOURNE, IT
15 SAYS -- AS I INDICATED, THERE'S LIKE 11 DIFFERENT
16 RELATIONSHIPS BETWEEN EMPLOYEE AND ATTORNEY HIRED BY THE
17 COMPANY, WHICH GIVES A DIFFERENT RESULT DEPENDING ON THE
18 NATURE OF THE CONVERSATION. AND IT DOESN'T HAVE TO BE A
19 PRIVATE CONVERSATION ABOUT A WILL OR A PERSONAL INJURY
20 LAWSUIT. IT'S COMPANY BUSINESS.

21 BUT IN CHADBOURNE, IT RECOGNIZES THAT AN
22 ATTORNEY THAT'S HIRED BY THE COMPANY GOES AND INTERVIEWS
23 AN EMPLOYEE, THAT DOESN'T CREATE A RELATIONSHIP BETWEEN
24 THE EMPLOYEE AND THE ATTORNEY NECESSARILY. IT DEPENDS
25 ON THE NATURE OF THE CONVERSATION, WHETHER IT'S IN
26 PREPARATION FOR LITIGATION, WHETHER IT'S FACT-FINDING.

1 AND I THINK THE COURT HAS TO INQUIRE -- AND I
2 THINK THAT'S WHAT CHADBOURNE SAYS, THE COURT HAS TO
3 INQUIRE AS TO THE NATURE OF THE CONVERSATION. WAS
4 COUNTY THERE TO GIVE ADVICE? WAS COUNTY COUNSEL THERE
5 TO STAND BY WHILE THESE TWO TALK EACH OTHER? WAS COUNTY
6 COUNSEL THERE TO LEARN, HEY, WHAT'S GOING ON HERE, TO DO
7 SORT OF A FACT-FINDING MISSION? AND ALL THOSE ARE
8 RELEVANT UNDER CHADBOURNE TO DECIDE THE OUTCOME OF THE
9 COURT'S INQUIRY.

10 MS. LOO: YOUR HONOR, I THINK WE KNOW THE NATURE OF
11 THE CONVERSATION. THE CONVERSATION IS RELATED TO A
12 SUBPOENA IN A CRIMINAL CASE ASKING FOR RECORDS TO BE
13 PRODUCED BEFORE A COURT. THAT IS CLASSIC CONVERSATION
14 BETWEEN AN ATTORNEY AND A CLIENT. THEY'RE TALKING ABOUT
15 THE NATURE OF SUBPOENAED DOCUMENTS THAT ARE ABOUT TO BE
16 PRODUCED IN COURT, THAT WE ASKED FOR A PROTECTIVE ORDER
17 FOR.

18 WE FILED A MOTION TO QUASH, WE ASKED FOR
19 REDACTIONS. ALL OF THESE ARE -- ALL OF THESE INDICATE
20 THAT THE CONVERSATION THAT WAS TAKING PLACE BETWEEN
21 MR. BOSTON AND THE COMMANDER AND COUNTY COUNSEL HAVE THE
22 ATTORNEY-CLIENT PRIVILEGE.

23 MOREOVER, IT COULD BE ABSURD TO ARGUE THAT
24 COUNTY COUNSEL ONLY HAS A PRIVILEGE THAT STAY, FOR
25 EXAMPLE, WITH ONLY THE SHERIFF. COUNTY COUNSEL HAS TO
26 BE ABLE TO OPERATE WITH THE SHERIFF'S -- HAS TO BE ABLE

1 TO COMMUNICATE WITH THE SHERIFF'S DEPUTIES, WHICH
2 INCLUDE CONTRACT ADMINISTRATORS. THEY ARE CONDUCTING
3 THE BUSINESS OF THE SHERIFF. SO WHEN A COUNTY COUNSEL
4 COMMUNICATES WITH EVEN A LINE STAFF MEMBER CONCERNING
5 THE SHERIFF'S BUSINESS, THAT CREATES AN ATTORNEY-CLIENT
6 PRIVILEGED COMMUNICATION.

7 THE COURT: I'M GOING TO READ THAT CALDECOTT AND
8 PERHAPS CHADBOURNE. AND IT'S GOING TO TAKE AWHILE, AND
9 THIS WILL BE A GOOD TIME FOR A BREAK FOR THE COURT
10 REPORTER. I'LL GIVE EVERYBODY A CHOICE: RECONVENE AT
11 4:00 OR PICK ANOTHER DAY? IT'S GOING TO TAKE ME -- I'M
12 SURE IT'S GOING TO TAKE ME AWHILE TO GO THROUGH THESE
13 CASES.

14 MS. LOO: YOUR HONOR, WE'D ASK TO MEET ON ANOTHER
15 DAY. AND IF THE COURT IS AGREEABLE FOR US TO SUBMIT
16 SOME BRIEFINGS ON THE ISSUE?

17 THE COURT: WE'RE NOT GOING TO FINISH TODAY, IT
18 LOOKS LIKE. I PREFER TO HAVE BRIEFING ON THIS. LET'S
19 PICK A DATE. IT CAN BE -- IT CAN -- WE CAN MOVE THIS
20 THING ALONG. IT DOESN'T HAVE TO BE IN A MONTH. WE CAN
21 GET THIS THING TO COME BACK -- WELL, WE JUST GOT SENT A
22 TRIAL. IF COUNSEL CAN CONFER ON A DATE, AND I'LL SEE
23 HOW IT WORKS OUT.

24 MS. LOO: YES, YOUR HONOR.

25 MS. NICHOLS: YOU'RE DARK ON THE 6TH AND 8TH, BUT
26 NOT THE 7TH?

1 THE COURT: CORRECT. AND WE CAN TRAIL THIS ON
2 MONDAY, IF YOU WANT TO.

3 MR. GARSON: MONDAY'S A DISASTER. HOW ABOUT THE
4 13TH?

5 THE COURT: FINE WITH ME.

6 MS. LOO: I'LL MAKE THE 13TH WORK.

7 THE COURT: ALL RIGHT. YOU GUYS ARE ORDERED BACK
8 ON THE 13TH. I'LL BE PROVIDED BRIEFING FROM BOTH
9 PARTIES.

10 MR. BOSTON, ARE YOU GOING TO BE IN TOWN ON THE
11 13TH?

12 THE WITNESS: MAY I LOOK REAL QUICK?

13 THE COURT: PLEASE.

14 THE WITNESS: YES, SIR.

15 THE COURT: ALL RIGHT. EVERYBODY'S ORDERED BACK ON
16 THE 13TH IN THIS COURTROOM AT 9:00 A.M.

17 MR. MAXFIELD: IN TERMS OF FUTURE EVIDENCE, IN
18 TERMS OF CALLING WITNESSES, DO WE KNOW WHERE WE'RE AT IN
19 TERMS OF WHEN THE DEFENDANT PLANS TO WRAP UP THEIR CASE?
20 I MEAN, IS THAT GOING TO HAPPEN ON THE 13TH OR WE GOT
21 MORE TO GO, AND I'LL JUST KEEP EVERYBODY ON-CALL?

22 THE COURT: DO YOU HAVE -- HOW MANY MORE WITNESSES
23 DO YOU HAVE?

24 MR. GARSON: WELL, I THOUGHT BOSTON WAS GOING TO BE
25 THE END, BUT NOW I'M NOT SO SURE. THERE MAY BE ONE
26 MORE, BUT WE'LL SEE HOW THIS GOES. I'M GETTING TO THE

1 END.

2 THE COURT: YOU HAVE WITNESSES YOU WANT TO CALL?

3 MR. MAXFIELD: RIGHT. ONE, AS FAR AS I KNOW, MAYBE
4 TWO. BUT PROBABLY ONE.

5 THE COURT: WHY DON'T YOU HAVE THEM READY ON THE
6 13TH.

7 MR. MAXFIELD: YOU WANT THEM HERE?

8 THE COURT: ON-CALL IS FINE.

9 MR. MAXFIELD: OKAY. I WILL DO THAT.

10 DEFENDANT WARING: YOUR HONOR, I HAVE A PENDING SDT
11 AS WELL FOR TODAY.

12 THE COURT: LET'S SEE IF WE GOT ANYTHING. IS THIS
13 FOR YOUR WEST COURT CASE?

14 DEFENDANT WARING: YES, SIR.

15 THE COURT: ALL RIGHT. MR. WARING, NOTHING HAS
16 BEEN RECEIVED UNDER SUBPOENA.

17 MR. GARSON: I CAN ADVISE THE COURT THAT IT IS THE
18 SAME VIDEOTAPES THAT I SUBPOENAED THAT WE DISCUSSED THIS
19 MORNING. HE PROVIDED HIS OWN SUBPOENA PRO PER ON THE
20 WEST COURT CASE.

21 THE COURT: ALL RIGHT. IS THERE A RESPONSE FROM
22 COUNTY COUNSEL?

23 THE CLERK: I HAVEN'T RECEIVED -- NOTHING HAS BEEN
24 RECEIVED BY THE COURT.

25 THE COURT: MS. KHOUZAM MADE HER ARGUMENTS AS IT
26 RELATES TO CASE ENDING IN 266, BUT NOT AS IT RELATES TO

1 MR. WARING'S OTHER MATTER.

2 MR. DUNN: RIGHT. SO -- KEVIN DUNN, APPEARING FOR
3 COUNTY COUNSEL ON BEHALF OF THE SHERIFF'S DEPARTMENT.
4 WE WOULD JUST ASK THE ARGUMENTS BE APPLIED TO THE
5 ADDITIONAL SUBPOENA ISSUED PRO PER.

6 THE COURT: THANK YOU.

7 MR. WARING, DO YOU WANT TO TELL WHY THAT'S
8 MATERIAL TO YOUR CASE?

9 DEFENDANT WARING: IT'S MATERIAL IN THAT CASE
10 BECAUSE IT WAS DONE IN RETALIATION FOR A GRIEVANCE I HAD
11 PUT IN. FOUR PHONE CALLS BEING DENIED TO ME ON CASE
12 NUMBER 0836, PER COURT ORDER. I THINK THAT THOSE PHONE
13 CALLS WERE DENIED TO ME AS RETALIATION FOR THIS MOTION.
14 SO IT'S KIND OF GOING UP THE LADDER. HOWEVER, I DO
15 THINK IT'S RELEVANT TO THAT CASE IN ITS PENDING
16 LITIGATION.

17 THE COURT: SO LET'S SAY JUST, FOR SAKE OF
18 ARGUMENT -- I'M NOT MAKING ANY FINDINGS. LET'S SAY, FOR
19 SAKE OF ARGUMENT, IT WAS DONE IN RETALIATION. WHAT DOES
20 THAT HAVE TO DO WITH -- FOR CASE ENDING IN 36, WHAT DOES
21 IT HAVE TO DO WITH THE ELEMENTS OF WHAT YOU'RE CHARGED
22 WITH?

23 DEFENDANT WARING: I ANTICIPATE A MOTION TO DISMISS
24 AS WELL ON THAT CASE, AND I NEED THAT DISCOVERY IN ORDER
25 TO KNOW WHAT I'M WORKING WITH.

26 THE COURT: ALL RIGHT. I'LL TAKE THAT UNDER

1 SUBMISSION.

2 AND SO THE 13TH IT IS. AND THEN, MR. WARING,
3 ON YOUR CASE 16WF0836, YOU NEED A GENERAL TIME WAIVER.
4 DO YOU WANT TO COME BACK ON THE 13TH WITH A CONTINUED
5 GENERAL TIME WAIVER OR DO YOU WANT TO SET A JURY TRIAL?

6 DEFENDANT WARING: GENERAL TIME WAIVER IS FINE.

7 THE COURT: OKAY. WE'LL SET THAT FOR THE 13TH AS
8 WELL.

9 (PROCEEDINGS ADJOURNED)


10 -000-

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.

I, MELISSA WATANABE, CSR NO. 13191, OFFICIAL
COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING
REPORTER'S PARTIAL TRANSCRIPT, FROM PAGE 1 THROUGH
147, INCLUSIVE, IS A FULL, TRUE AND CORRECT
TRANSCRIPTION OF MY SHORTHAND NOTES OF THAT PORTION
OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED AT SANTA ANA, CALIFORNIA, THIS 7TH DAY
OF AUGUST, 2018.


MELISSA WATANABE, CSR NO. 13191
OFFICIAL COURT REPORTER

PROOF OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of Orange, over 18 years old and that my business address is 333 West Santa Ana Boulevard, Suite 407, Santa Ana, California 92701. I am not a party to the within action.

On August 9, 2018, I served the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES RE: EXCLUSION OF PRIVILEGED ATTORNEY-CLIENT COMMUNICATIONS** on all other parties to this action by placing a true copy of said document in a sealed envelope in the following manner:

☒ (BY U.S. MAIL) I placed such envelope(s) addressed as shown below for collection and mailing at Santa Ana, California, following our ordinary business practices. I am readily familiar with this office's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☐ (BY ELECTRONIC SERVICE) Pursuant to California Rules of Court, rule 2.251(c)(2), by submitting an electronic version of the document(s), I caused the documents to be sent to the person(s) listed below.

☐ (BY FACSIMILE) I caused such document to be telefaxed to the addressee(s) and number(s) shown below, wherein such telefax is transmitted that same day in the ordinary course of business.

☐ (BY PERSONAL SERVICE) I caused such envelope(s) to be hand-delivered to the addressee(s) shown below.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: August 9, 2018


Simon Perng

NAME AND ADDRESS TO WHOM SERVICE WAS MADE

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